?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 27.11.2018

RESERVED ON : 22.11.2018

DELIVERED ON : 27.11.2018

*CORAM
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

+W.P(MD)No.6579 of 2018
and
W.M.P(MD)Nos.6370 and 6371 of 2018

#M.Thayanidhi
.. Petitioner

Vs.

$1.The Secretary
to Government,
Home Department, Secretariat,
Chennai.

2.The Member Secretary,
The Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai ? 600 003.

3.The Additional Director General cum
Director General of Prisons,
Venals Road, Egmore, Chennai~08.

4.The Superintendent of Prison,
Central Jail, Madurai ? 625 016.

5.The Superintendent of Police,
Madurai District. .. Respondents
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in pursuance to the impugned order passed by the third respondent in vide proceedings in No.48333/E.S.3/2017 dated 12.03.2018 and quash the same and consequently directing the respondents to appoint the petitioner (Enrollment No.100003214) as Assistant Jailor in Prison Department in pursuance of provisional selection order dated 11.12.2017 and pass such further or other orders.

!For Petitioner : M/s.D.Geetha
for Mr.G.Prabhakari

^For Respondents : Mr.J.Gunaseelan Muthiah,
1 and 3 to 5 Additional Government Pleader.

For Respondent No.2 : Mr.D.Sivaraman

:ORDER

The petitioner herein was provisionally selected for the post of Assistant Jailor vide proceedings No.2195/OTD~A4/2015 dated 11.12.2017. Before issuance of appointment order, the third respondent herein requested the fifth respondent to verify the antecedent of the petitioner. The crime record maintained by the fifth respondent disclosed that the petitioner was one of the accused in a criminal case registered by the Thallakulam Police Station in Crime No.1316 of 2011 for offences under Section 332 IPC and Section 3(1) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act read with Section 34 IPC. Therefore, the third respondent issued proceedings dated 12.03.2018 intimating the petitioner that his antecedent is not satisfactory, so he is not appointed as Assistant Jailor. This proceeding is under challenge in this writ petition.
2.Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader representing the respondents 1 and 3 to 5 and the learned counsel appearing for the second respondent.

3.The learned counsel appearing for the petitioner concedes that the petitioner did not disclose the criminal case registered against the petitioner. According to the learned counsel, a false case was registered against him and he faced the trial and got acquittal on merit much before the date of the notification. Since there was no criminal case pending against him at the time of applying for the post, the petitioner did not disclose the case registered.

4.The learned counsel for the petitioner further submitted that the impugned order of the third respondent states that even if the petitioner is acquitted from the criminal case, the acquittal is due to hostility of the witnesses and by extending the benefit of doubt and therefore he is not entitle for the employment. The said reasoning is contrary to law and pronouncement of the Courts.

5.Relying upon the Judgments of the Hon-ble Apex Court in Joginder Singh v. Union Territory of Chandigarh reporeted in (2015)2 SCC 377 and Avtar Singh v. Unioin of India and Others reported in (2016)8 SCC 471, the learned counsel would submit that the petitioner is legally entitled to appointment as he was not guilty of any crime and was honorably acquitted on merit prior to notification. Hence, the impugned order passed by the third respondent is liable to be quashed.

6.In the counter affidavit filed on behalf of the respondents 1, 3 to 5, it is reiterated that as per G.O.Ms.No.151, Personnel and Administrative Reforms (N) Department, dated 21.02.1981 as amended in Government Letter

No.97012/Per.M/1981~1, Personnel and Administrative Reforms Department, dated 14.12.1981, verification of character and antecedents of candidate selected to the posts of Grade II Warder is necessary. In view of the sensitive nature of the work of Assistant Jailor, police verification report was called for from the Superintendent of Police, Madurai District, where the petitioner resides. The report received from the fifth respondent disclosed the petitioner-s involvement in the criminal case registered at Thallakulam Police station in Crime No.1316 of 2011. As per G.O.Ms.No.1410, Home (Pri~II) Department, dated 17.10.2008, Special Rules for the TamilNadu Jail Subordinate Services was made wherein, it has been stated as below:
?(f)A person has not involved in any criminal case before Police verification.
Explanation(1): A person who is acquitted or discharged on benefit of doubt or due to the fact that the complainant turned hostile, shall be treated as a person involved in a criminal case.
Explanation (2): A person involved in a criminal case at the time of police verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as mistake of fact shall be treated as not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment?
Therefore, the petitioner was not considered for appointment as Assistant Jailor for suppression of criminal case and the acquittal was not an honourable acquittal, but due to prime witness turned hostile. Hence, the learned Additional Government Pleader appearing for the respondents 1 and 3 to 5 would submit that the writ petition is lack of merit and liable to be dismissed.

7.The perusal of record indicates that in Crime No. 1316 of 2011 for the incident alleged to have taken place on 31.05.2011, the petitioner was shown as one among the three accused by the Thallakulam Police. After investigation, final report was filed and taken cognizance by the learned Judicial Magistrate No.1, Madurai and committed the case for trial to the Sessions Court. The learned Fourth Additional District and Sessions Judge, Madurai has framed charges under Section 332 IPC, Section 3(1) of TNPPDL Act read with Section 34 IPC and under Section 5 of TNPPDL Act read with 34 of IPC against this petitioner. After considering the evidence let in by the prosecution, the Trial Court has found the case not proved. The petitioner and other accused were acquitted on 20.08.2013. The second respondent has invited applications for the post of Assistant Jailor on 09.03.2016. The petitioner was provisionally selected on 11.12.2017. During the second verification, the petitioner was found involved in a criminal case and therefore despite acquittal in the criminal case, he was not appointed since the acquittal was honorable .

8.In this context, it is relevant to say, when the expression ?Honourable Acquittal? came up for consideration before the Hon-ble Apex Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal reported in (1994)1 SCC 541 and the Hon-ble Apex Court after referring the Service Rules of Punjab Government, held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions honourable

acquittal, acquitted of blame, and fully exonerated are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression Honourably acquitted. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted. (emphasis supplied)

9.This observation has been reiterated in the subsequent Judgement of the Hon-ble Apex Court in Joginder Singh v. Union Territory of Chandigarh reported in 2015(2)SCC 377.

10.In Avtar Singh v. Union of India and Others reported in (2016)8 SCC 471, when the vexed issue suppression of material facts while applying for public post came up for consideration due to conflicting decisions by Division Benches, the Full Bench of the Hon-ble Supreme Court, in paragraph 31, has held as below:

?31.Coming to the question whether an employee on probation can be discharged/refused appointment though he has been acquitted of the charge(s), if his case was not pending when form was filled, in such matters, employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the accusations which have been levelled. If on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form opinion as to fitness on the basis of material on record. In case offence is petty in nature committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects?.

11.In the same Judgment at paragraph 38(4), it is specifically stated as below:
?38.4.In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted:
38.4.1.In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.
38.4.2.Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.
38.4.3.If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is

not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee?.

12.The petitioner has failed to disclose at the time of application about the criminal case he faced, since on the date of application no case was pending against him. Long before he applied for the post, he was found not guilty by the Court after full fledged trial. The perusal of the judgment in S.C.No.47 of 2013, which is enclosed in the typed~set of papers, we find that acquittal was due to want of proof and failure of prosecution witnesses to identify the offenders. No doubt, some of the key witnesses have turned hostile, but while passing the impugned order the third respondent ought to have taken note of the observation of the Supreme court in interpreting the term ?Honourable acquittal? and passed appropriate order.

13.For the above said reason, the writ petition is partially allowed. The impugned order of the third respondent dated 12.03.2018 is hereby quashed. The third respondent is hereby directed to consider the case of the petitioner afresh in the light of the Judgment rendered in S.C.No.47 of 2013, where the petitioner was tried as second accused and found not guilty. Besides for appropriate guidelines, the Judgments of the Hon-ble Supreme Ccourt cited supra which has clarified the meaning and impact of the term ?honourable acquittal? and the principle laid down to deal cases of suppression of facts at the time of application, shall be taken into consideration. The process of reconsidering the eligibility of the writ petitioner for the post of Assistant Jailor, as stated above, shall be completed within a period of three months from the date of receipt of this order.

14.Accordingly, the writ petition is partly allowed as directed above. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

To

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